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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,438	04/09/2007	Dan G. Siegel	20737-PCT-US	2428
30482	7590	06/24/2010	EXAMINER	
BEMIS COMPANY, INC. Patent and Trademark Department 2200 BADGER AVENUE OSHKOSH, WI 54904			PATTERSON, MARC A	
ART UNIT	PAPER NUMBER			
	1782			
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06/24/2010	PAPER			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,438	<b>Applicant(s)</b> SIEGEL ET AL.
	<b>Examiner</b> MARC A. PATTERSON	<b>Art Unit</b> 1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 27 May 2010.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1,3-5,7-18,20 and 22-27 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,3-5,7-18,20 and 22-27 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/06)  
Paper No(s)/Mail Date 5/27/10

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

**DETAILED ACTION**

**WITHDRAWN REJECTIONS**

1. The 35 U.S.C. 102(b) rejection of Claims 1 - 4, 6 - 11, 16, 19 - 24 and 26 as being anticipated by Meier et al. (U.S. Patent No. 6,623,773 B2) as evidenced by Shimp et al (U.S. Patent No. 4,781,934), of record on page 2 of the previous Action, is withdrawn.
  
2. The 35 U.S.C. 103(a) rejection of Claims 5 and 27 as being unpatentable over Meier et al. (U.S. Patent No. 6,623,773 B2), of record on page 2 of the previous Action, is withdrawn.
  
3. The 35 U.S.C. 103(a) rejection of Claims 12 - 15 and 17 – 18 as being unpatentable over Meier et al. (U. S. Patent No. 6,623,773 B2) in view of Ramsbottom (U.S. Patent No. 2,621,129), of record on page 2 of the previous Action, is withdrawn.

**NEW REJECTIONS**

***Claim Rejections – 35 USC § 103(a)***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3 – 5, 7 – 12, 16 – 17, 20, 22 - 24 and 26 – 27 are rejected under 35 U.S.C.

103(a) as being unpatentable over Rivett et al. (U.S. Patent Application Publication No. 2002/0172834 A1) in view of Aversano (U.S. Patent No. 4,476,112).

With regard to Claim 1, 3 – 4, 7 – 9 and 13 - 15, Rivett et al disclose a food packaging film comprising a food layer capable of contacting a myoglobin food product, comprising a preservative (meat preservative; paragraph 0065) held within a package formed within the film (paragraph 0025); the film also comprises an oxygen barrier layer (paragraph 0055); curing is not disclosed by Rivett et al; the claimed aspect of insufficiency to cure the entire myoglobin - containing food product is therefore disclosed of Rivett et al. Rivett et al fail to disclose a preservative comprising a nitrogen oxide - containing compound and capable of interacting with the food product to produce a desirable color.

Aversano teaches the use of nitrites as preservatives, for color (column 2, lines 65 - 68), for meat (column 2, lines 20 - 24), for the purpose of using preservatives having well - known properties (the preservatives are known preservatives; column 2, lines 65 - 68).

It therefore would have been obvious for one of ordinary skill in the art to provide a preservative comprising a nitrate, therefore a nitrogen oxide - containing compound and capable of interacting with the food product to produce a desirable color, in order to provide preservatives having well - known properties as taught by Aversano.

With regard to Claims 5 and 27, Aversano et al fail to disclose a nitrite comprising sodium nitrite in an amount sufficient to transfer between 0.0008 and 0.016 milligram per square inch to the product within 96 hours. However, because Aversano disclose nitrite, it would have been obvious for one of ordinary skill in the art to have provided for sodium nitrite, as sodium

nitrite is a member of the group of nitrite salts. It also would have been obvious for one of ordinary skill in the art to have determined, through routine optimization, the desired amount of sodium nitrite to the product depending on the desired amount of coloring.

With regard to Claim 10, the food contact is adhered to the substrate, and is therefore an adhesive layer.

With regard to Claim 11, at least one additional film layer is disposed on the food contact layer comprising an adhesive layer (the film is a multiple layer film; paragraph 0043).

With regard to Claims 12 and 17, vacuum packaging is disclosed by Rivett et al (paragraph 0081).

With regard to Claims 16, 19, 22 - 24 and 26, Rivett et al et al therefore disclose release of the nitrogen - containing compound in a controlled manner and a method comprising providing the film with the oxide of nitrogen.

With regard to Claim 20, Rivett et al therefore disclose permeating the film with the oxide of nitrogen.

6. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rivett et al. (U.S. Patent Application Publication No. 2002/0172834 A1) in view of Aversano (U.S. Patent No. 4,476,112) and further in view of Ramsbottom (U.S. Patent No. 2,621,129).

Rivett et al and Aversano disclose a film for packaging meat as discussed above. Rivett et al and Aversano fail to disclose a vacuum package comprising non - oxygen gases.

Ramsbottom teach a vacuum package (column 5, lines 8 - 16) comprising non -oxygen gases (column 1, line 9) for food, for the purpose of retaining color (column 1, lines 6 - 12).

It therefore would have been obvious for one of ordinary skill in the art to have provided for packaging comprising non -oxygen gases in Rivett et al and Aversano in order to retain color as taught by Ramsbottom.

#### ANSWERS TO APPLICANT'S ARGUMENTS

7. Applicant's arguments regarding the 35 U.S.C. 102(b) rejection of Claims 1 - 4, 6 - 11, 16, 19 - 24 and 26 as being anticipated by Meier et al. (U.S. Patent No. 6,623,773 B2) as evidenced by Shimp et al (U.S. Patent No. 4,781,934), 35 U.S.C. 103(a) rejection of Claims 5 and 27 as being unpatentable over Meier et al. (U.S. Patent No. 6,623,773 B2) and 35 U.S.C. 103(a) rejection of Claims 12 - 15 and 17 – 18 as being unpatentable over Meier et al. (U. S. Patent No. 6,623,773 B2) in view of Ramsbottom (U.S. Patent No. 2,621,129), of record in the previous Action, have been considered and have been found to be persuasive. The rejections are therefore withdrawn. The new rejections above are directed to amended Claims 1, 3 – 5, 7 – 18, 20, 22 – 24 and 26 – 27.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marc A Patterson/  
Primary Examiner, Art Unit 1782